

A General Overview of Impact Fees

Volume One

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A. Introduction

The Georgia Development Impact Fee Act (DIFA) was enacted into law in 1990. It sets rules for local governments that wish to charge new development for a portion of the additional capital facilities needed to serve it. Under DIFA, local governments may impose exactions on developers to help finance the expansion of their infrastructure systems only through an impact fee system and only for the specific types of facilities and infrastructure listed in the law.

This publication is one of a set of two guidebooks on impact fees prepared by the Department of Community Affairs (DCA). This volume, *A General Overview of Impact Fees/Volume One*, is intended to familiarize local governments with the major provisions and requirements of DIFA and to help them determine whether they need or want an impact fee system in their own community. A second “how to” guidebook, entitled *Impact Fees: Georgia's Comprehensive Planning Requirements /Volume Two*, focuses the development of a Capital Improvements Element for inclusion in a local government's comprehensive plan and technical issues that will be of concern only after a local government makes the decision to go ahead with an impact fee system.

Readers should be advised that the summary of DIFA provided herein does not cover every point contained in the law and may not describe particular parts of DIFA that would be of special interest to a particular city or county. Thus, a local government considering impact fees should read DIFA carefully and consult with its own experts, as necessary.

Bold type has been used in this guidebook to emphasize important points. Bold type applied to quotes from DIFA was inserted by the authors and does not appear in the actual legislation.

1. The Benefits of DIFA

To overburdened local governments pressed by shrinking state and federal funding, impact fees offer a formal mechanism for ensuring that the development community pays a reasonable share of the costs of public facilities. Impact fees can help local governments avoid placing the entire burden of adding capital improvements and expanding infrastructure capacity on existing taxpayers. Linkages between DIFA and Growth Strategies comprehensive planning (as defined in the Georgia Planning Act of 1989) should also lead to more rational decision-making about the location of public facilities and better coordination between infrastructure development and land use and environmental planning.

Developers will benefit from DIFA because it will: 1) standardize costs for all developers in the same service area; 2) clarify the kinds of facilities and improvements for which developers may be charged; 3) ensure that communities spend funds collected through impact fees on capital improvements that directly benefit the project being charged; 4) ensure that capital improvements are completed within a reasonable time after fees are paid; and 5) establish a developer's infrastructure costs early in the development process so that project financing can be arranged.

2. How DIFA Will Affect All Local Governments

Though DIFA is expected to result in many positive benefits to Georgia, it could prove to be a mixed blessing for some local governments. **DIFA significantly restricts local governments' power to impose development exactions. These restrictions apply to all local governments - whether or not they choose to implement impact fee systems. Thus, DIFA will require many local governments to make significant changes in their traditional land development practices. Hence, all local governments should carefully review their existing land development procedures and regulations for consistency with the law.**

DIFA may also affect fees charged by local government utility departments and water and sewer authorities to the extent that they finance additional capacity to serve new growth.¹

B. Determining Whether Impact Fees Are Right for a Specific Community

The costs and benefits of implementing an impact fee system should be considered carefully by local governments. Each local government is unique, and only a thorough analysis at the local level can determine whether impact fees are a practical alternative for a given community. The following section describes how Georgia's new impact fee legislation could affect communities depending on their size, geographic location, age and rate of growth. A discussion of technical assistance that local governments may need to implement impact fees and a method for performing a detailed cost/benefit analysis for determining potential impact fee revenues are covered in the last two sections of this guidebook.

1. Rapidly Urbanizing Communities Experiencing Intense Development Pressures

Communities experiencing rapid influxes of people often find themselves overwhelmed by the high costs of expanding public facilities and services to meet the needs of new growth. Impact fees will probably be a necessity for Georgia's more rapidly urbanizing cities and counties, especially those that have been heavily dependent in the past on exactions and land dedications to fund infrastructure improvements. DIFA limits the use of impact fees to seven basic categories of capital facilities.² Thus, costs for many types of capital facilities (for example, schools, government offices, hospitals or landfills) cannot be recovered through impact fees. In fast growth areas, providing additional public facilities in categories that cannot be financed with impact fees will create an increasing drain on local tax bases in the next decade, and communities that formerly required exactions (including land dedications) for these purposes will have to stop doing so. This may put more pressure on such communities to collect impact fees for capital facilities that are eligible.

¹ See section C.14 *for more information on DIFA and public utilities.*

² See section C.2 for these categories.

Fortunately for rapidly growing communities, the higher the overall level of development, the greater the immediate potential for generating impact fee revenues. These communities may have better access than rural communities to the personnel and equipment required to provide administrative support for an impact fee system. Local governments with a history of active land development tend to keep more detailed records of land transactions, and may have some experience with traditional capital improvements programs. High growth local governments are also the most likely to have existing impact fee ordinances, which will likely not meet the requirements of DIFA.

2. Mature Communities Experiencing Slow or Moderate Growth

As a general rule, mature, slow-growth communities will encounter more problems structuring an impact fee system and will find the potential benefits more limited than areas experiencing rapid growth.

Significant impact fee revenues will be generated only if reasonable amounts of new development occur. Thus, impact fees generally offer little help for communities faced with dwindling population or employment. Some cities are largely built-out, and without a supply of vacant parcels suitable for large-scale development or areas appropriate for revitalization or redevelopment, the amount of potential impact fees is limited.

In general, impact fees cannot be used to replace aging infrastructure such as public buildings, roads, bridges, or water and sewer facilities that serve only existing development. On the other hand, where some new growth is occurring, and where excess system capacity is available for use by new development, governments may be able to recover some of the costs of capital facilities already in place.

Higher density communities generally have numerous and more complicated land development regulations and a more complex land permitting system than rural areas. Regardless of whether they choose to adopt an impact fee ordinance, metropolitan communities will face a significant task in reviewing and amending their existing land development controls, zoning ordinances, permitting procedures and subdivision regulations to comply with DIFA.

High population density also generates greater demands for high levels of public safety services, such as police and fire protection. But, because many of the major expenses of these services are for maintenance and operations (personnel and vehicles rather than capital facilities), communities are likely to be disappointed in the amount of funding available for these services via impact fees.

Assessing the potential of impact fees will also be more complicated in heavily populated areas due to the prevalence of intergovernmental service agreements for water and wastewater treatment and road development. Using impact fees to finance facilities designed for joint use will require careful planning, and may require all jurisdictions involved to adopt separate impact fee ordinances.

Densely developed urban areas may also have more trouble measuring the impacts of individual projects on their own systems and the systems of neighboring governments. For example, determining a single project's impact on traffic congestion or calculating the effect of stormwater runoff from a newly-paved parking surface on a downstream county's sewer system will likely be difficult. On the positive side, however, impact fee systems developed under DIFA should provide a basis for objective determination of interjurisdictional impacts and for equitable cost sharing.

3. Semi-rural Jurisdictions Adjacent to Urban Growth Areas

A third group, and one whose local governments can generally benefit a great deal by implementing impact fee systems, is made up of rural communities that may soon find themselves affected by growth from beyond their borders. Activities such as the construction of a regional reservoir, airport, highway or major industrial facility in an adjacent jurisdiction can often trigger spin-off population and employment growth. Often, this growth has effects that can be felt across city and county boundaries.

If a local government is not prepared to set reasonable development standards or does not have a plan for the provision of roads, parks, recreation facilities, water supply, wastewater treatment, and other public services to accommodate this externally-generated growth, new development can threaten the level of services and pastoral quality of life that are often taken for granted by residents of rural communities. Impact fees have a place in controlling the rate and quality of new growth. Most communities would prefer that growth be harmonious with what already exists, rather than helter-skelter. Because the impact fee law requires the establishment of service levels in the comprehensive plan as well as a careful determination of specific areas where services will be provided, impact fees will not only help to pay the capital costs associated with growth, but will indirectly benefit local governments by controlling and directing new development to areas served by adequate infrastructure.

By putting an impact fee system in place in advance of new growth, urban fringe communities can prepare to meet the needs of new development in a prudent and timely fashion. Impact fees can help ensure that new

system improvements are made before growth places too much strain on existing facilities and thereby lowers the quality of life in a community. For instance, impact fees can help pay for land acquisitions for public facilities while suitable sites are still available and (and is reasonably priced. By planning for growth in advance, local governments can avoid overburdening capital facilities to the point of slowing or halting development.

4. Slow Growing or Economically Depressed Rural Communities

The Impact Fee Act is being studied with great interest by economically depressed communities that are losing population and employment. These jurisdictions are unlikely to be faced with immediate shortages of community facilities or services, but they may be tempted to view impact fees as an economic development tool. They may also wonder whether instituting impact fees is more likely to drive away prospective investors or to promote development by financing critical public facilities and services.

Impact fees should certainly not be viewed by these communities as an easy way to fill local government coffers or as a panacea that will stimulate the local economy. Where growth is at a standstill, many factors are probably at work, and for this reason, impact fees alone are unlikely to change the development climate.

Economic development in rural areas generally must be undertaken on a regional level and on a number of fronts simultaneously to be highly successful. In addition to a reliable labor force and cheap land, water, wastewater treatment and transportation are three of the most important prerequisites to attracting new commercial and industrial growth. In sparsely populated areas, the tax base is generally insufficient to support building these facilities. While impact fees may supplement tax revenues and provide a mechanism for financing infrastructure, implementing impact fees may not attract development as long as other problems such as an inadequately skilled work force and a lack of affordable housing are ignored.

Unfortunately, some of Georgia's smaller, slower-growth communities may find that the legal and administrative requirements of an impact fee system are not only beyond their current capacities, but outweigh the potential short-term benefits. For this reason, many slow-growth communities may be wise to withhold judgment on impact fees until other jurisdictions have developed ordinances and administrative procedures they can use as models in developing their own systems.

Other rural governments may choose to work cooperatively with neighboring jurisdictions to reduce the costs of administering an impact fee system and provide shared capital facilities. No one can really assess how adopting impact fees before nearby cities and counties have done so will affect economic development in a specific community. Depending on various factors, imposing impact fees may either promote or decrease development within y community. However, by adopting impact fees jointly, or at the same time, neighboring local governments can create more level development costs across jurisdictional borders and reduce the risk of artificially shifting growth from one community to another.

C. An Overview of the Georgia Development Impact Fee Act

1. Exactions, Project Improvements and System Improvements

In the past, many local governments have relied upon development exactions in the form of land dedications, required improvements or payments of money as a means of financing capital facilities. DIFA defines a “development exaction” as:

. . . a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

November 30, 1992 marks the end of the transitional period established by DIFA for local governments to bring their land development regulations and procedures into compliance with the law. After this date, it will be illegal for local governments to impose exactions for infrastructure system capacity without complying with the new law. Whether an exaction can legitimately be imposed will hinge on whether it is intended to cover the costs of a "project improvement" or a "system improvement," as these terms are defined in the law. Under DIFA, local governments may continue to require developers to pay for project improvements a condition of zoning or permit approval, with or without an impact fee system. In contrast, DIFA strictly controls the way new development may be required to pay for system improvements. Thus, an understanding of the distinction between project improvements and system improvements will help local governments determine: 1) whether their existing land use regulations and procedures comply with DIFA; and 2) which of their capital improvement projects are eligible for impact fee financing.

System improvements are:

. . . capital improvements that are public facilities and are designed to provide service for the community at large, in contrast to project improvements.

Project improvements as defined by DIFA are:

. . . site improvements and facilities that are planned to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements.

DIFA specifies that, **"If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project,"** or, if a project is **"included in a plan for public facilities approved by the governing body of a municipality or county,"** it is a system improvement subject to the limitations and requirements of the Act. (O.C.G.A. 36-71-2). System improvements must also **"create additional service capacity to serve new growth and development"** (O.C.G.A. 36-71-9).

On first reading DIFA, the distinction between a project and a system improvement seems quite clear; however, separating the two in practice may not always be an easy task. For example, improvements to a freeway interchange adjacent to a development project would benefit a community's entire transportation system. Since this would clearly fit DIFA's definition of a system improvement, such an improvement could be partially funded using impact fees by a local government that had a valid impact fee ordinance. But would right-of-way dedications for streets through new subdivisions be considered project or system improvements? While road rights-of-way for arterial or collector streets would add capacity to the overall road system (thus meeting the definition of a system improvement), a local road (perhaps a cul-de-sac) would primarily serve the project occupants and thus might be interpreted to be a project improvement.

Furthermore, DIFA leaves some questions unanswered regarding which exactions a local government could impose to mitigate the negative impacts of a proposed development project on surrounding property owners. The definition of a project improvement refers to **". . . site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and**

convenience of the occupants or users..." In some cases, landscape buffers, sidewalks and fences required by local land development regulations may not necessarily serve the project occupants, but may be primarily intended to benefit surrounding property owners. For example, visual buffers and open space amenities certainly improve quality of life for project occupants. However, they may also meet one of the tests of a system improvement if they provide more than incidental benefits to the whole city or county. This would be especially apparent in areas where protection of scenic resources or tourism are critical to an overall economic development strategy, or where strict design controls are imposed to raise land values for the entire community.

2. Categories of Capital Facilities Eligible for Impact Fee Financing

DIFA places limitations on the types of improvements for which new development may be charged. There are seven categories of capital facilities or infrastructure that can be financed with impact fees. As listed in O.C.G.A. 36-71-2, these are:

1. Water supply, treatment and distribution;
2. Wastewater collection, treatment and disposal;
3. Roads, streets and bridges;
4. Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
5. Parks, open space, recreation areas and related facilities;
6. Public safety facilities (police, fire, emergency medical and rescue facilities); and
7. Libraries and related facilities.

As mentioned earlier, many other capital facilities including schools, courthouses, government offices, health departments, and solid waste facilities cannot be financed with impact fees. In the future, local governments will have to find means other than impact fees or exactions to finance these categories of facilities.

Not all capital improvements in the categories listed above are eligible for impact fee financing-only projects or portions of projects that create additional service capacity. This restriction prevents local governments from using impact fees paid by new development to subsidize capital improvements for existing development. Moreover, impact fees cannot be used to pay for facility maintenance or the replacement of worn out equipment. Nor can impact fees be used to pay the (usually) higher costs of maintenance and operation associated with expanding capital facilities serving new growth. These costs must be paid with other sources of revenue. **DIFA also specifies that, to be financed with impact fees, equipment must have a useful life greater than ten years.**

As one can see, these provisions of DIFA significantly limit local governments' use of impact fees, especially in the category of public safety, for which most of the costs of serving new development involve adding staff or vehicles rather than buildings. For example, impact fees might be used to build a new police station, but may not be used to add patrol cars or pay additional police officers, even though the demand for added personnel might be a direct result of new development. Accordingly, local governments must be very careful in structuring impact fee systems so that only eligible improvements are included.

3. Comprehensive Planning Requirements of DIFA - Linkages with the Georgia Planning Act of 1989

In order to ensure that impact fees are expended for capital facilities that support a community's needs and goals, DIFA establishes links between the right to charge impact fees and certain requirements of the Georgia Planning Act of 1989. Any local government that wishes to implement an impact fee system under DIFA must

first adopt a comprehensive plan that meets the state's Minimum Standards and Procedures established pursuant to the Georgia Planning Act of 1989 and that contains a seventh element, the Capital Improvements Element, or CIE.³

³ Approval of each local government's comprehensive plan by DCA results in its certification as a Qualified Local Government (QLG). QLG status is an eligibility requirement for many types of state grants and assistance programs. Since planning compliance dates for local governments are staggered on a five-year schedule, some local governments will continue to have QLG status until 1995 without having an approved comprehensive plan. QLG status without an approved plan and CIE will not meet the legal requirements necessary to impose impact fees. Thus, local governments eager to implement an impact fee system may decide to finish their comprehensive plans earlier than their recertification dates would otherwise require.

The purpose of the CIE is to establish where and when new services or capital facilities will be provided within a jurisdiction and how they will be financed. As defined by DIFA, the CIE must include the following for each category of capital facility for which an impact fee will be charged:

- **a projection of needs** for the planning period (usually 20 years);
- designation of **service areas**;
- designation of **service levels**;
- a **schedule of improvements** listing impact fee related projects and costs for the first five years after plan adoption;
- a **description of funding sources** proposed for each project.

Even without a CIE, the Minimum Standards and Procedures require that local plans include a Community Facilities Element that assesses a community's infrastructure and capital facility needs. Although the CIE will cover many of the same facility needs, it must contain a more detailed analysis in order to establish a rational and legally-defensible basis for imposition, calculation and expenditure of impact fees. DIFA provides that:

Expenditures of development impact fees shall be made only for the categories of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvements elements and as authorized by this chapter (O.C.G.A 36-71-8).

4. Authority to Impose Development Impact Fees

DIFA states that:

Municipalities and counties which have adopted a comprehensive plan containing a capital improvements element are authorized to impose by ordinance development impact fees as a condition of development approval on all development pursuant to and in accordance with the provisions of this chapter. After the transition period provided in this chapter, development exactions for other than project improvements shall be imposed by municipalities and counties only by way of development impact fees imposed pursuant to and in accordance with this chapter (O.C.G.A 36-71-4).

The right to impose impact fees pursuant to DIFA is granted only to local governments that have met the comprehensive planning requirements of the Act. While water and sewer authorities may enter into intergovernmental agreements with local governments to collect or expend impact fee funds, they do not have the power to pass impact fee ordinances; their right to exact system improvements costs from new development

through hook-up or connection fees are also subject to certain limitations established by DIFA. These are described on page 26.

5. Intergovernmental Agreements for Shared Facilities

DIFA appears to imply that intergovernmental agreements are required before impact fees can be used to build facilities or infrastructure intended to serve more than one jurisdiction, and before one jurisdiction can collect or spend impact fees from another jurisdiction.

DIFA specifies that:

Municipalities which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements" (O.C.G.A. 36-7111).

Impact fees may be collected through intergovernmental agreements to pay for systems improvements that traverse jurisdictional boundaries, such as roads or water retention reservoirs. Libraries, regional parks and other multijurisdictional systems may use intergovernmental agreements to pool the resources of several local governments to build centralized facilities. Interjurisdictional agreements will also allow a local government to work together to address "spill over" effects of developments that will have regional impact. For example, a regional shopping mall near the border of one county might create traffic impacts that would affect the transportation network of another. Through an intergovernmental agreement, the shopping mall developer might pay an impact fee that would be used to expand roads across the county line impacted by the project.⁴

⁴ This would require the county assessing the impact fee to establish a transportation service area that extended into the neighboring jurisdiction to encompass the area impacted by the project. This example illustrates why intergovernmental agreements should be consistent with the CIE of each local government.

DIFA will not necessarily prevent local governments without impact fee ordinances from contracting with neighboring jurisdictions to provide them with water or sewer capacity. However, a distinction must be made between leasing excess treatment capacity to another jurisdiction and **spending impact fees collected from one jurisdiction to build new system improvements designed to serve another jurisdiction**. For example, if a city agrees to authorize impact fees to build a county wastewater treatment facility, the contributions made by city developers should go toward buying long-term capacity proportionate to the amount of proposed city impact fee contributions.

Another question raised by DIFA is whether a county can charge impact fees within its municipalities when the county is the primary service provider for a particular category of service or infrastructure. There should be no problems in cases where the county and its municipalities have met DIFA's planning requirements and passed their own ordinances. But what if some of the cities involved do not have an approved comprehensive plan with a CIE or an impact fee ordinance?

In such a case, it might be possible to craft an intergovernmental agreement and county impact fee ordinance by which the county could charge and collect impact fees on development within incorporated areas; however, the individual cities that had not met the planning requirements of DIFA would not be authorized to impose those impact fees as a condition of development approval or, it would appear, to deny development approval to enforce impact fee payment. Whether attaching impact fee payments to municipal land development regulations

without a city impact fee ordinance could be construed to constitute an illegal exaction by a municipal government is a question that should be directed to legal counsel.

To avoid putting a city without an impact fee ordinance in a legally precarious situation, the county could clearly assign cities to service areas shown in the county plan and state its intention to impose county-wide impact fees within incorporated areas; it would also be preferable for the county to develop administrative procedures to collect the impact fees directly, or somehow attach fee payment to its own permitting regulations.

6. Required Provisions of Local Impact Fee Ordinances

DIFA (O.C.G.A. 36-71-5) contains a list of provisions that are required for inclusion in all local impact fee ordinances. There is not room in this guidebook to list or discuss all of these requirements; however, local governments should check this section carefully when drafting an ordinance.

7. Required Fee Schedule

For each category of capital improvement included in an impact fee ordinance, the ordinance must also contain a fee schedule specifying fees "for various land uses per unit of development by service area"(O.C.G.A. 36-71-4(e)). Impact fee experts suggest that local governments recalculate their fee schedules periodically to reflect updates in their capital improvements programs and changes in funding scenarios for various projects. In Georgia, revising an impact fee schedule will require amending a community's impact fee ordinance, since the fee schedule must be an integral part of the ordinance.

8. Proportionate Share Impact Fees

DIFA places many restrictions on the way impact fees can be calculated and expended. DIFA establishes the principle that local governments may not charge developments more than a "proportionate share" of the cost of new facilities. Many of the provisions of the law that are discussed in the following section are designed to protect this principle. "Proportionate share" is defined by DIFA as "that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project."

In practical application, the proportionate share concept will require local governments interested in using impact fees to do a more careful job of projecting future growth and have better estimates of the capital facility and infrastructure expansion costs in order to prepare reasonable and defensible fee schedules. **Any governmental entity collecting money from developers to pay for system improvement costs will need to be able to back up the fees they set with realistic cost figures, formulas, and numbers.**

There are various approaches to calculating impact fees and to crediting development for past and future contributions made toward system improvements. DIFA does not specify a single fee calculation method; however, it does identify some factors that must be taken into account. The most important rules for calculating impact fees are covered in O.C.G.A. 36-71-5 as follows:

A development impact fee shall not exceed a proportionate share of the cost of system improvements, as defined in this chapter.

Development impact fees shall be calculated and imposed on the basis of service areas.

Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as new growth and development.

Development impact fees shall be based on actual system improvement costs, or reasonable estimates of such costs.

and

Development impact fees shall be calculated on the basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.

DLPA's proportionate share rule, and many of its other requirements, are designed to ensure consistency with what is commonly referred to as the "rational nexus test." This term comes from court cases in which impact fees were held to be valid exercises of police power by local government, provided:

- they are calculated by measuring the needs created for public infrastructure by the development being charged the fee;
- they do not exceed the cost of such infrastructure; and
- they are "earmarked," i.e., spent, for the purposes for which they are collected so as to benefit those who pay them.

9. Establishing Service Levels

Under DIFA, acceptable service levels must be defined in each community's CIE as a basis for establishing the need for additional capacity to serve new development. 'Level of service' is defined by DIFA as:

. . . a measure of the relationship between service capacity and service demand for public facilities in terms of demand-to-capacity ratios or the comfort or convenience of use or both.

As can be seen from this definition, service levels need to be stated in quantifiable or at least very specific terms, since they are a measure of the benefit developers will get for their fees. The "projection of needs" component of a comprehensive plan's CIE must clearly identify existing service levels at the time of plan adoption for all categories of public facilities to be financed with impact fees. In the "service level" component of the CIE, future service levels the community intends to achieve and maintain as its population grows must be established and adopted for each category of infrastructure for which impact fees will be charged.

As mentioned earlier, the costs of raising service levels for existing development are ineligible for impact fee funding. In principle, local governments wishing to use impact fees to achieve service levels for new development higher than existing service levels must also raise the money to bring the existing community up to the higher service level. For example, if new subdivisions were required to finance three acres of park land per 1,000 residents, a local government would have to make sure that older, existing neighborhoods also maintain this acreage to population ratio, and this land would have to be acquired using funds other than impact fees. This provision will have the general effect of restraining local governments from setting unreasonably high standards and fees for new development. However, by allowing different service levels to be established in separate service areas, DIFA allows some manipulation of this principle through the way that service areas boundaries are drawn.

10. Establishing Service Areas

A "service area" is defined by DIFA as:

. . . a geographic area defined by a municipality, county or intergovernmental agreement in which a defined set of public facilities provides service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

Service areas, which must be defined in a local government's CIE, are designed to help satisfy the rational nexus test by ensuring that impact fees paid by specific development projects benefit such projects and are used to provide and maintain a defined service level within a reasonable geographic proximity of the project site. Service areas may cover all or part of a geographic area of a local government, and may even span jurisdictional boundaries. As stated previously, the same level of service must be provided to new and existing development within each service area.

Service areas for various categories of services or facilities may be completely different or overlap because of the varying planning or engineering criteria used to define them. It is important to understand the serious implications of establishing service area boundaries, since defining service areas can have significant effects on economic development goals, the protection of natural resources, land use patterns and even land values. Local governments should understand that once service area boundaries are established and impact fees are collected based on them, they will not be simple to change. Service areas will also place limitations on the flexibility with which impact fees can be spent.

11. Recovering the Cost of Existing System Capacity

DIFA allows local governments with excess capacity to charge impact fees to recover the cost of existing infrastructure that was built before the impact fee ordinance was adopted. This practice, often referred to in impact fee literature as “recoupment,” is optional under DIFA. Specifically, the law says:

A...development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed facility. (O.C.G.A 36-71-9(b))

Recoupment fees are calculated and handled administratively in the same manner as any other impact fee except that, because these fees are collected to reimburse local governments for money they have already invested in infrastructure, recoupment fees may be spent as a local government sees fit and need not be dedicated to impact fee pools to build future infrastructure in a given service area. Revenue streams from impact fees cannot be used to secure bonds for infrastructure; however, they can be used to pay off previously incurred bonded indebtedness on existing capital facilities, thus increasing local governments' capacity to borrow new money.

Under DIFA, recoupment will require a careful analysis of how and when each applicable capital project was originally financed, because, like all fee calculation methods, recoupment must respect the general principles of not double-charging and adjusting credits to reflect the time value of money.

The decision to recoup the cost of existing infrastructure may have various ramifications related to establishing service levels and service area boundaries.

If a local government intends to follow a recoupment approach to impact fees it is especially important that its CIE establish a point-in-time estimate of the excess capacity remaining in existing infrastructure or capital facilities, and that deficiencies that must be remedied to meet service levels goals are identified for each service area. It may also be important to design service areas paying special attention to boundaries of CID districts, special tax districts, fire protection zones or other areas where special taxes have been levied to pay for capital improvements in the past.

12. Developing a Basic Fee Structure for System Improvements

As stated in O.C.G.A. 71-36-5(k), impact fees must reflect the actual cost of the system improvements needed to serve new development, or reasonable estimates thereof. In keeping with this concept, it is critical that the total funds collected to pay for a capital improvement should never exceed its actual cost. To avoid double-counting, or charging more than once for the cost of the capital facility, certain credits for other kinds of contributions to system improvements must be included in any impact fee calculation methodology. The entire revenue stream that finances each capital improvement must be considered when establishing the portion of its costs that can be collected through impact fees. Adding another level of complexity, credits against impact fees for other types of contributions must be adjusted based on when a capital facility was (or will be) built, and when revenues have flowed (or will flow) into each project over time.

Impact fee calculation methodologies are beyond the scope of this guidebook and are only mentioned in order to explain how DIFA works. A generic model for calculating a fee schedule for proportionate share impact fees would go something like this:

- The gross cost of the system improvement projects in a given service area and category of improvement would be identified or estimated;⁵
- This gross figure would be adjusted downward, backing out known, or anticipated, non-local financing for each capital improvement;
- New developments would be collectively credited for their non-impact fee contributions toward system improvement by backing anticipated contributions out of the total net cost. This would involve discounting payments or revenue streams to adjust for the time value of money, that is, to reflect when such contributions would be made;
- Following the steps above would yield the total net cost collectable through impact fees for a particular category of system improvement. This cost could then be divided by the total units of capacity the capital facilities were designed to provide to new development within the service area, thus establishing the basic fee schedule or per unit impact fee;
- To calculate the proportionate share owed by a particular new development, the net cost of one unit of capacity would be multiplied by the total units of capacity the development is expected to absorb.⁶
- Any individual credits due to the specific projects (see below) would then be deducted from the amount owed according to the fee schedule.

This fee schedule methodology would be performed separately for each category of capital improvement financed through impact fees, as well as for each separate service area.

⁵ System improvements, by definition, must create capacity to serve new development. Impact fees cannot be used to finance costs incurred to raise service levels to existing development. Thus capital improvements designed strictly to raise service levels for existing development would not be considered in developing an impact fee schedule, although they would be listed in a local governments' CIE. If, as will often be the case, a capital improvement is designed to benefit both existing and new development, some adjustment must be made in the fee calculation methodology to back out the portion of the project costs associated with remedying existing service level deficiencies for current residents. This might be done by calculating the percentage of the total new capacity created by

the project that will serve existing development, or some other approach might be used. The method of discounting the costs intended to remedy service level deficiencies may vary with the category of infrastructure under consideration.

⁶The measure of capacity used would vary with the type of capital facility. For example, in calculating water impact fees, a community might determine that an average household used 200 gallons of water per day. If 50,000 gallons of new capacity were being added, dividing it by 200 GPD would indicate that the equivalent of 250 new residential units could be added. Dividing the net cost of the capacity by 250 would yield the impact fee per unit of development. A subdivision adding 100 houses would pay for 100 units. A factory projected to use 1000 gallons of water per day would pay an impact fee equal to five residential units.

13. Two Types of Impact Fee Credits

The generalized fee calculation method outlined above could become considerably more complex in practice. Basically, there are two generic categories of credits against which impact fees which must be calculated. One category includes those credits that can be built into the basic impact fee schedule in the manner describe above; in addition to these, other credits required by DIFA may need to be calculated and tracked on a project-by-project basis.

The first category of credits, which can be built into the general fee schedule, typically includes:

- non local funds;⁷
- contributions new development will make in the future toward building system capacity through means other than impact fees;⁸
- taxes or user fees paid in the past that were dedicated to capital improvements or used to retire bonds that financed system capacity. These credits will be applicable if a local government is recovering the cost of facilities built in the past. (See page 20).

Some of the most common project-specific credits might include:

- credits based on post DIFA voluntary agreements between local governments and developers;⁹
- credits for impact fees paid on abandoned building permits by previous owners of a development;¹⁰
- credit for Community Improvement District (CID) taxes where the service area defined is different than the CID boundaries;¹¹

⁷ Non-local revenues often take the form of private donations, grants or state and federal transfer payments.

⁸ DIFA states that, "Development impact fees shall be calculated on a basis which is net of credit for the present value of revenues that will be generated by new growth or development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers."

⁹ See page 29.

¹⁰ DIFA specifies that, "In the event a building permit is abandoned, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land" (O.C.GA 36-75-5).

¹¹ Theoretically, CID credits could be subtracted from the basic fee schedule, but only if the entire CID were designated as a service area. If, on the other hand, a CID were contained within a larger service area, properties within the CID would probably be due an additional or individual credit. They would owe fewer impact fees than other property within the service area, reflecting contributions paid as special CID taxes.

- credits that are being transferred from one project to another in the same service area;
- credits for one-time hook-up fees paid to water or sewer departments or authorities, to the extent that such payments are dedicated to system improvements;¹²
- credit for past exactions;
- credit for right-of-way dedications.

Regarding credits for past exactions, one particularly problematic provision of DIFA states that:

In calculation of development impact fees for a particular project, credit shall be given for the present value of any construction of improvements or contributions or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements. (O.C.G.A. 36-71-7(a))

DIFA's intent is clear with regard to credits for system improvements made after the passage of the Act. On the other hand, it does not specify whether this provision should be applied to land dedications, construction of infrastructure or even utility hook-up fees for system improvements exacted prior to the passage of DIFA.

While DIFA does not state whether the fee-payer or the local government would be responsible for researching and crediting exactions, it would be most logical to require the developer to submit evidence of his right to a pre-DIFA credit rather than imposing the burden of researching such credits on a local government.

¹² DIFA does not specify whether hook-up fee credits should be built into the basic fee structure or credited on a project-by-project basis. However since such fees are usually calculated on an individual basis, individual credits would be the most conservative approach.

While post-DIFA exaction credits will be clearly documented under an impact fee record keeping system, or in voluntary agreements drawn up between local governments, developers and/or governmental entities, this is unlikely to be the case with pre-DIFA exactions.¹³ Depending on local practices, such exactions might be attached to documents at the courthouse, stored with subdivision plats, drafted as written notices of zoning approval and presented to the landowner, recorded by a utility authority or department, or (as is common in many rural areas of Georgia) mentioned briefly in the minutes of a planning commission meeting. In many cases, such records would be incomplete or difficult to obtain.

If, indeed, O.C.G.A. 36-71-7(a) is intended to apply to pre-DIFA exactions, the question remains as to how far back such system improvement credits should be considered, and through how many previous owners of a parcel of land. For example, would it be necessary for a local government to credit every right-of-way dedication made since the beginning of its highway system? Calculating the present value of land dedicated in the distant past could present problems.

14. Special Provisions Related to Water and Sewer Improvements

DIFA allows water and sewer departments of local governments to continue charging new development for a proportionate share of system improvements without passing an impact fee ordinance. Water and sewer authorities can still charge user fees, or hook-up or connection fees to pay for system improvements in jurisdictions without impact fee ordinances, but DIFA imposes stricter requirements on authorities than on local governments providing their own water and sewer services. The Act states that:

¹³ Under an impact fee system pursuant to DIFA, developers will be able to transfer any credits for contributions they make toward system improvements (in excess of impact fees due) from one project to another in the same service area and for the same category of improvement through private agreements (See Section C.15.); or, alternatively, they will be able to sell or assign such impact fee credits along with the parcel of land that generated them. In contrast, giving credits for pre-DIFA exactions could prove much more difficult, both in terms of tracking and assigning rights to credits, and in calculating the present value of past exactions and dedications made long ago. For this reason, it may be reasonable for a local impact fee ordinance to establish how far back in time exaction credits will be applicable.

Nothing in this chapter shall limit a municipality, county or other governmental entity from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users provided that the development impact fee ordinance of a municipality or county or other governmental entity that collects development impact fees pursuant to this chapter shall include a provision for credit for such hook-up or connection fees collected by the municipality or county to the extent that such hook-up or connection fee is collected to pay for system improvements. **Imposition of such hook-up or connection fees by any governmental entity to pay for system improvements either existing or new shall be consistent with the capital improvement element of the comprehensive plan and shall be subject to the approval of each county, municipality, or combination thereof which appoints the governing body of such entity. The adoption, imposition, collection and expenditure of such fees shall subject to the same procedures applicable to the adoption, collection, and expenditure of development impact fees by a county (O.C.GA 36-71-13(c)).**

The first part of this provision stipulates that if a local government passes an impact fee ordinance, it must give credits against impact fees for system charges embedded in hook-up fees. Developers must not be double charged for system improvements -- once in the form of a hook-up fee charged by a public utility, and a second time under an impact fee ordinance.

The second part of the provision (in bold, above) applies only to 'governmental entities' defined by DIFA as:

...any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly.

DIFA does not stipulate that local governments that provide their own water and w sewer service through line agencies or public works departments must have a CIE or establish formal service areas or service levels in order to continue charging for-system improvements through hook-up fees. In contrast, water and sewer authorities are bound by all the administrative and procedural aspects of DIFA. Moreover, an authority that wishes to finance system improvement costs through hook-up or connection fees must have the approval of the local government(s) that appoint its governing board to do so. ¹⁴ Furthermore, such fees must be consistent with the CIEs prepared by these local governments.

In this way, DIFA gives local governments more control over the policies and activities of water and sewer authorities than existed previously. It would appear that a local government may refuse to authorize an authority's hook-up or connection fees if the fees charged, the improvements proposed, or other aspects of an authority's plan for services (proposed service levels or service areas, for example) are inconsistent with the

local government's CIE. This requirement reinforces the important role of the CIE, which is meant to ensure that infrastructure development supports the community goals established in a comprehensive plan. However, it will also create the need for some local governments to adopt a comprehensive plan and CIE earlier than anticipated in order to allow their authorities to keep collecting system improvement costs through hook-up fees.

In effect, DIFA exempts local governments that provide their own water and sewer services and do not want to implement impact fee systems from some of the planning and bookkeeping requirements it imposes on authorities. **Nevertheless, all water and wastewater treatment providers are bound by the proportionate share principle in DIFA, and should thus be prepared to demonstrate their formulas for calculating hook up and user fees.** Even local water and sewer departments should be able to prove that the system improvement costs embedded in their hook-up or connections fees do not exceed the actual cost of providing capacity to new development.

Some readers of DIFA may be confused by O.C.G.A 36-71-13(d), which states that:

¹⁴ User fees (monthly utility bills) established by water or sewer authorities may still be used to pay for system improvements under DIFA without a CIE or impact fee ordinance, and need not be approved by local governments. Since user fees are applied to existing and new users equally, they impose no special burden on new development. However, if a local government adopts a water or sewer impact fee ordinance, credit for user fees dedicated to system improvements must be built into impact fee schedules to avoid double-charging new development.

Nothing in this chapter shall apply to a water authority created by an act of the General Assembly of Georgia, as long as such authority is not established as a political subdivision of the State of Georgia but instead acts subject to the approval of a county governing authority.

Most authorities are established as separate governmental entities so that they can incur debts without affecting the credit rating or borrowing power of cities and counties. As independently chartered entities, authorities contract with local governments to provide services. DIFA's restrictions and conditions apply to all water and sewer authorities that are separate governmental entities, wherein a separate board or governing authority -- not the county commission or city council -- controls the authority. The local government's influence over such authorities is generally limited to appointing the governing body of the authority.

To the best of our knowledge, O.C.G.A 36-71-13(d) applies to only one water authority in the state, which differs from the rest is that it is directly controlled by the local government that created it. The charter of the Clayton County Water Authority contains the unique provision that " . . . the county governing authority [the county commissioners] may alter, change, modify, or appeal any of the regulations adopted by the water authority."

The general intent of DIFA seems to be to treat hook-up fees and connection fees as "de facto" impact fees; even if the local governments that created the authority do not adopt an impact fee ordinance, DIFA holds water and sewer authorities (and to some extent public works departments) to the same standards of fiscal accountability and the same obligation to provide direct and quantifiable benefits to the fee-payer that would be required under an impact fee ordinance.

15. Voluntary Agreements with Private Developers

Local impact fee ordinances must include the provision that:

. . a developer must have the right to elect to pay a project's proportionate share of system improvements costs by payment of development impact fees according to the fees schedule as full and complete payment of the development project's proportionate share of improvement costs.

Accordingly, a local government cannot **require** a developer to dedicate land or make a system improvement himself instead of paying an impact fee. On the other hand, developers may voluntarily construct system improvements through private agreements with local governments as an alternative to paying an impact fee.

Developer contributions toward building infrastructure may exceed impact fees owed and, to the extent that contributions of land, money, facilities or services constitute system improvements, the developer may be entitled to future reimbursement from impact fees collected in the same service area. The Act states that:

In the event that a developer enters into an agreement with a county or municipality to construct, fund or contribute system improvements such that the amount of the credit created by such construction. . . is in excess of the development impact fees which would otherwise have been paid...the developer shall be reimbursed . . . from development impact fees paid by other development located in the same service area which is benefited by such improvements. Credits shall not be given for project improvements (O.C.G.A 36-71-7)

Credits established by private agreements may be transferred from one project to another, but only within the same service area and category of improvement. For example, credits for system improvements to roads made on behalf of one development project could not be applied to the park impact fee due on another, but could be applied to reduce road impact fees on another project in the same service area.¹⁵

The law allows a developer (if a local government so agrees) to construct or pay for system improvements that may not be fully justified by existing demand or anticipated short term growth in a given service area, and be reimbursed with impact fees collected from subsequent development. The terms under which a developer will be repaid for system improvements from future impact fees can be varied by the terms of the agreement. Such agreements could specify means other than impact fees whereby the local government would repay a developer for system improvements. Also, if the system improvements a developer finances fail to stimulate other development in the service area and the impact fee fund does not grow as expected, the developer will have to wait longer than anticipated to collect his money. A local government is not obliged to repay the developer for system improvements from other revenue sources unless a formal agreement so specifies.

¹⁵ see O.C.G.A 36-71-13.

A fine point, but one that should not be overlooked, is that **impact fee credits pursuant to private agreements should not be given for system improvements that raise service levels substantially above those adopted in a jurisdiction's comprehensive plan.** Developers are only entitled to reimbursements from impact fee funds for the portion or percentage of voluntary improvements that raise service levels to those established in the CIE. To grant excessive reimbursement credits to a given developer for oversized improvements around his specific project could burden the impact fee fund of the entire service area and leave no money to complete the other critical short-term projects listed in the CIE. Local governments should be careful not to enter into voluntary agreements with developers that violate this principle. Moreover, under DIFA, agreements could be constructed so that a local government could reimburse developers for system improvements from non-impact fee funds, or a consortium of developers could construct system improvements jointly and share any credits due.

16. Appeal of Fee Determination and Arbitration

A procedure for appeals from administrative determinations must be included in all local impact fee ordinances. DIFA allows a developer to pay his fee under protest, proceed with his development and then resolve his complaint through a binding arbitration process through the American Arbitration Association.

17. Individual Fee Assessment

Impact fee ordinances must contain a provision allowing the individual assessment of impact fees at the option of the applicant at the time of development approval. This provision is designed to add a measure of flexibility; however, if a community's fee schedule is properly developed, an individually calculated assessment should not vary a great deal from the standardize fee calculation.

18. Refunds

Impact fee ordinances must provide for refunds of impact fees under certain conditions. Developers are entitled to a refund of impact fees and interest earned on them if 1) the developer is denied service by a local government when service capacity exists; or 2) fees collected have not been spent or encumbered within six years of collection in the service area from which they were collected. The developer must apply in writing for a refund within a year after notification by the local government that it is due.

19. Certification of Fees

Impact fee ordinances must provide a process by which a developer may receive certification of the amount of impact fees owed for a project that will be good for 180 days from the date of certification. This is intended to provide stable fee estimates that will allow a developer to construct a financing package and cash flow analysis using accurate figures. The developer can be assured that fees calculated for a proposed project will not rise if the building permit is issued and fees are paid within this time period.

20. Timing of Fee Payment

Impact fees cannot be required to be paid until such time as a building permit is issued, with the exception of impact fees assessed for stormwater management, which may be collected when site construction permits are issued. By allowing the deferral of fee payment until construction begins, carrying costs paid by developers will be reduced.

21. Procedural Requirements

In addition to meeting the planning requirements mentioned above, communities must meet certain procedural requirements before adopting an impact fee ordinance. These requirements are covered in O.C.G.A. 36-71-6 and include establishing a development impact fee advisory committee made up of between five and ten members, of which at least forty percent must be drawn from the development, building or real estate industries. Also, two hearings (at least two weeks apart) must be held by the governing body of a city or county prior to adopting an impact fee ordinance.

22. Special Purpose Exemptions

A local impact fee ordinance may exempt all or part of certain projects from impact fees, provided they “are determined to create extraordinary economic development and employment growth or affordable housing.” If a local government wishes to exempt these projects from paying impact fees, policy statements supporting such exemptions must be included in its comprehensive plan. However, other impact fees may not be used to make

up an exempted project's share of system improvement costs. Local governments must find other revenues with which to fund those costs.

23. Accounting and Annual Reporting Requirements

DIFA provides that impact fees collected must be held in interest bearing accounts and may not be commingled with general revenue funds. Accounting records must be kept for funds collected and dispersed from each service area and records must be maintained in sufficient detail to identify revenue collections, expenditures and obligations by specific capital improvement and by individual development. The detail should be sufficient to allow implementation of a mandated system of credits and refunds and to produce a **required annual financial report**.

24. Summary

As this section of the guidebook points out, some aspects of DIFA are straightforward, while the law is silent or ambiguous on other points. As basic legal precedents regarding DIFA are established by Georgia courts, local governments will gain a better understanding of many of its provisions. This description of DIFA is intended to familiarize local governments with the broad outline of the law and alert them to some of its complexities, but does not cover every aspect of DIFA. This guidebook cannot substitute for sound legal counsel in regard to developing an impact fee system and does not provide sufficient information to calculate impact fee schedules. Accordingly, governments interested in impact fees should confer with experts who can assist them in putting together a proper program.

D. Technical Assistance Needed to Implement an Impact Fee System

There are four separate activities related to developing an impact fee system, each of which may require different types of technical assistance:

1. Bringing Land Development Regulations and Practices into Conformance with DIFA

Local governments should review with legal counsel all land development regulations including building codes, zoning ordinances and subdivision regulations. Changing land development regulations generally requires holding public hearings and official action by elected officials. To avoid future legal problems, local governments should ensure that definitions and terminology used in various land development instruments are consistent throughout.

Local governments should also discuss DIFA with staff planners, and local planning and zoning commissions, to ensure that their activities comply with the Act. Complying with the law may affect not only written ordinances, but also administrative activities such as plat review conferences between planning staff and developers, permitting procedures in various offices or departments of local government and protocols of various citizen boards and appointed commissions. It is important to make citizen planning boards and commissions, which often make day-to-day subdivision and zoning decisions or advise elected officials on land use matters, understand how the restrictions on exactions established by DIFA will affect their powers and the decisions they make.

All local government personnel involved in land development activities should be briefed on the implications of the new law. Any staff who give out information on land development to the public or are involved in site review, utility connections or granting building permits (for example, building inspectors and local health

department staff) should also be briefed on changes in procedures and interdepartmental coordination related to impact fees.

2. Meeting the Comprehensive Planning Requirements of DIFA

Some local governments will be preparing their entire comprehensive plans concurrently with developing an impact fee system, while others that already have an approved plan will be modifying their plans to add a CIE.

Some local governments may choose to contract with one of the state's regional development centers to help develop their plans. Many private engineering/land use planning firms also contract with local governments to prepare comprehensive plans. Local governments may prepare their own comprehensive plans, as is usually the case for communities with staff planners. Each of these options is discussed in DCA's guidebook, entitled *Planning Assistance*.

A CIE for a comprehensive plan can also be prepared in any of these ways, but regardless of who prepares the CIE, the task will require gathering information from administrative staff, department heads and various local government-appointed boards and commissions. More information on preparing a CIE is also found in DCA's second guidebook on impact fees, entitled *Impact Fees: Georgia's Comprehensive Planning Requirements/Volume Two*.

The "Development Impact Fee Advisory Committee" specified by DIFA should also be thoroughly briefed about the community's comprehensive planning goals so that they understand community growth trends, economic development strategies, environmental concerns and desired future land use patterns. If the comprehensive planning process takes place concurrently with development of an impact fee system, the Development Impact Fee Advisory Committee should be encouraged to meet with citizen groups working on the comprehensive plan in order to share information and ideas.

3. Drafting an Impact Fee Ordinance

Local governments should work closely with legal counsel on all aspects of developing an impact fee ordinance. DIFA specifies a number of provisions that must be included in all local impact fees ordinances. However, as this guidebook went to press, no model impact fee ordinances had been prepared by any state agency or local government association specifically for the state of Georgia.

Unfortunately, model ordinances from other states are not reliable patterns for ordinances under Georgia's law, nor are any of the older impact fee ordinances that were in place around the state prior to passage of DIFA. However, DIFA does provide an explicit list of required provisions that must be included in all local ordinances (O.C.G.A. 36-71-4). Although each community will need to customize its ordinance, those that are not in a rush to develop impact fee ordinances stand to benefit from seeing how impact fee pioneers in Georgia interpret DIFA.

4. Developing an Impact Fee Schedule

A fee schedule must be adopted as an integral part of each impact fee ordinance specifying the fee "for various land uses per unit of development on a service area-by-service area basis"; thus, changing the fee schedule requires a local government to amend its impact fee ordinance. Developing a rational, legally defensible fee structure could prove to be one of the most challenging aspects of developing an impact fee system, and this part of the process may require expert assistance. Fee structures will often be based on estimates from the

technical staff of line agencies or public utilities, as well as system designers such as architects and engineers. Setting fees will also require a good general understanding of local government finance.

In short, defensible impact fee ordinances, fee schedules and administrative systems should be developed using a multi-professional team approach. Few city attorneys or private sector accountants in Georgia have previous experience with impact fees systems. Prudent local governments may wish to involve planners, lawyers, engineers, line agency personnel (for example the parks director or public works director), accountants, and/or fiscal experts, all of whom should work together during the development of an impact fee system.

It is important to ensure that the staff, consultants or firms chosen to develop an impact fee system are familiar with both DIFA and with the provisions of the Georgia Planning Act of 1989. Local officials should take an active role in reviewing and approving all work done, since the final responsibility for CIEs and impact fee systems lies with local elected officials.

E. Assessing the Costs and Benefits of Impact Fees

In deciding whether they should adopt an impact fee ordinance, local governments should study impact fees under DIFA to determine both their short and long term revenue producing potential. This section of the guidebook presents an overview of the basic factors that should be considered in making a decision about whether to implement an impact fee system. A rough-cut version of the analysis described below can be done in order to decide whether to proceed with developing impact fees; however, for local governments that are already committed to the idea of impact fees, a more refined version of the same methodology can be useful in developing a CIE for a comprehensive plan.

If this preliminary study of impact fees occurs outside (or prior to) the comprehensive planning process, local governments will have to make some broad assumptions about growth trends and speculate on desired service levels. On the other hand, if this type of analysis occurs toward the end of the comprehensive planning process or as an integral part of developing an impact fee system, population and employment projections will have been refined, and proposed service levels and capital facility needs will have been developed with extensive public consideration and citizen input.

Getting even a rough estimate of potential impact fee revenues will require: 1) a general understanding of the kinds of projects eligible to be financed through impact fees; 2) an assessment of current conditions and infrastructure capacity; and 3) a basic inventory (with cost estimates) of potential projects that will be needed to serve projected new development. In order to maximize the potential for collecting impact fees and make best use of fiscal resources, local governments should consider a range of alternative financing strategies along with impact fees, and look for the optimum combinations of financing mechanisms for each category of infrastructure.¹⁶

DCA recommends that local governments take the following approach in evaluating the potential of impact fees as a financing method for capital facilities:

1. Forecast expected demand for each applicable category of system improvement by service area in the next six, ten and twenty years. This will give an initial indication of whether a community can expect enough short-to-medium term growth to justify the effort and expense of setting up an impact fee system.

2. Estimate the lost revenues that will result from complying with DIFA. These costs will include development exactions for system improvements, any noncomplying impact fees and utility hook-up or connection fees charged by water or sewer authorities in communities that do not have a CIE. Compare these

revenue losses to the total cost of capital facility expansion for each category of infrastructure under consideration. This will indicate roughly how much revenue will have to be made up from impact fees or other financing mechanisms just to maintain existing levels of service.¹⁷

3. Establish tentative service areas¹⁸ and service levels for each infrastructure category and service area, or define a range of service levels to be considered in this analysis.¹⁹ Since altering service area boundaries or service levels can radically affect the total amount of impact fees a local government can collect under DIFA, communities with the resources to do so may wish to conduct a number of analyses, by experimenting with various combinations of service levels and/or service area boundaries in order to discover which combination would maximize impact fee revenues.²⁰

4. Identify facilities with excess capacity as well as those that are nearing or exceeding design capacity.

5. Calculate the costs of addressing existing deficiencies and bringing existing development in each service area up to the proposed service levels. Note that deficiencies in the existing systems can only be defined in relation to specific service levels.²¹ Understanding the true costs of raising service levels to existing development in each service area (a cost that cannot be paid for with impact fees) will provide a reality check as to whether service levels should be shifted up or down, or may also cause a reexamination of service area boundaries.

¹⁶ Regardless of whether a local government chooses to use impact fees in the future, some costs will be incurred in reviewing and modifying existing land development regulations and procedures for compliance with DIFA. The cost of this work should not be factored into this analysis, since it must be done with or without an impact fee system. Local governments may wish to review and amend non-conforming land development regulations while setting up an impact fee system.

¹⁷ Some exactions, for schools, government buildings, solid waste facilities etc., cannot legally be replaced with impact fees. Nevertheless, the extent to which local governments' budgets will be strained by absorbing the loss of these types of exactions should be considered in determining whether impact fees are worth pursuing.

¹⁸ Typical reasons for multiple service areas might include: 1) separating areas intended to have different levels of service; for example, urbanizing versus rural areas; 2) separating areas served by independent facilities or areas in which the costs of providing service are radically different; 3) steering infrastructure away from areas with severe development constraints; 4) phasing in infrastructure to support environmental or land use policies; 5) separating the fee assessment and collection by jurisdiction (especially in joint plans), or otherwise complying with proposed intergovernmental agreements.

¹⁹ To calculate deficiencies or excess capacity, it will be necessary to assume service levels for each category of system improvement. The analysis may need to be repeated, plugging in a range of service levels, to arrive at the optimum service levels for collecting maximum impact fees. However, it is in the course of the comprehensive planning process that final service levels will be established, and many non-financial considerations may go into setting them.

²⁰ In setting service levels, serious consideration should be given to potential increases in ongoing maintenance and operation costs associated with better services and programs, or larger infrastructure systems. It is possible that increased M&O costs associated with establishing new service levels, which cannot be financed with impact fees, could dwarf the costs of the required capital facility expansions, especially the portion of the overall costs collectable from impact fees.

6. List major capital improvement projects needed to expand system capacity for the upcoming five to ten years, based on growth forecasts and desired service levels.

7. Obtain a total (gross) cost estimate for each proposed capital improvement project, and estimate the local (net) cost by deducting known or proposed non local contributions and sources of funds.²²

8. Consider whether it will be practical to recover the costs of existing capital facilities with remaining capacity. This depends on how much reserve capacity is available, and how existing facilities and infrastructure were paid for in the first place.

9. Determine the maximum portion of each project's local cost that could be financed with impact fees and aggregate potential impact fee revenues for each category of system improvement. Comparing potential revenues to the cost listed below for each category of capital improvement may show that there is more potential impact fee revenue to be gained on one type of infrastructure than another.

10 Estimate the initial cost of establishing an impact fee system for each category of capital facility under consideration. For various reasons, the expense of setting up and administering impact fee systems for parks and libraries will generally be lower than for roads, water, sewer or stormwater management; thus, potential benefits and costs of an impact fee system should be compared on a category-by-category basis.

11 Estimate the annual cost of administering an impact fee system for each category of eligible capital facility under consideration.²³

12. After weighing costs against benefits for impact fees, compare impact fees to other capital facility financing alternatives.²⁴

²¹ For example, the same road segment may have plenty of excess capacity if a community is satisfied with a Level of Service (LOS) rating of C, but be deficient if it has set a LOS rating of A as its goal. A local government may only be able to agree on an acceptable service level when it knows what attaining that service level will cost.

²² Typical methods of funding capital improvements, the use of which may affect impact fees calculations, might include: 1) state or federal grants; 2) revenue bonds; 3) dedicated excise taxes; 4) general obligation bonds; 5) general revenue funds; 6) past and future property taxes; 7) in-lieu fees, exactions and land dedications; 8) dedicated taxes (examples: special option sales tax, motor fuel taxes and other highway user charges and fees); 9) motor vehicle title tax, license and registration fees; 10) corporate income tax; 11) portions of utility hook-up fees used to pay for system improvements.

²³ These costs might include adding manpower and computer equipment, reorganizing local government administrative systems to provide interdepartmental coordination or dealing with increased expenses for banking or accounting services. However, with a well designed impact fee system, these higher costs may be offset somewhat by the extra professional staff time that was previously devoted to exaction negotiations with developers. Furthermore, DIFA allows up to 3% of impact fees collected to be used for administering a fee system.

²⁴ Other types of revenues which could be used to finance system improvements include: 1) state or federal grants; 2) user fees; 3) excise taxes; 4) income taxes; 5) property taxes; 6) land transfer taxes; 8) sales taxes; 9) license, privilege, registration permit and title fees; 10) connection fees (see DIFA 36-71-12); 11) fines and confiscations; and 12) interest income from investments.

Some criteria that might be used to compare impact fees to other financing techniques and alternatives include: 1) risk; 2) equity (fairness to all parties concerned); 3) efficiency; 4) timeliness; 5) legal defensibility; 6) political feasibility; 7) predictability of revenue streams; and 7) administrative complexity.

Conclusion

In summary, if enough growth to generate substantial needs for new system capacity is expected, and if a local government has the information and planning capacity to prepare an analysis of impact fees, it will almost certainly indicate that the potential revenues from impact fees will outweigh the costs of developing and administering the system. On the negative side, inadequate consideration of the legal implications of DIFA, or a superficial approach to developing an impact fee system could not only fail to maximize benefits, but also expose a local government to serious risks and problems.

Immediately upon making a decision to implement impact fees, a local government should look toward addressing the comprehensive planning tasks required under DIFA: If a community already has an approved comprehensive plan, it will still need to develop and adopt a CIE. For local governments that do not have a comprehensive plan, considerable work lies ahead. The preparation of the six basic planning elements required under the Georgia Planning Act, plus the development of a CIE, could easily take a year or more, and, if not anticipated, could delay the adoption of an impact fee ordinance. Planning activities should be undertaken prior to, or concurrent with, development of an impact fee ordinance and fee structure. Moreover, the work of reviewing and updating existing land development ordinances and coordinating interdepartmental administrative systems and procedures to accommodate an impact fee system should not be underestimated or overlooked.

The second volume in DCA's set of guidebooks on impact fees explains how to develop a CIE and integrate it with a local plan. All of DCA's "how to" guidebooks are distributed to local governments by the state's regional development centers. Guidebooks are also available directly from DCA for a nominal charge.